IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1672 of 2005
with
CIVIL APPLICATION No. 4872 of 2005
with
FIRST APPEAL NO. 5249 TO 5251 OF 2001

Date of Decision: 05-07-2005

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UNITED INDIA INSURANCE CO. LTD - Petitioner(s)

Versus

JETIBEN BHURABHAI KOLI WD/O BHURABHAI PUNJA KOLI & 6 - Respondent(s)

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(See next page for Full Title)

Coram:
The Hon'ble Mr. Justice Bhawani Singh, Chief Justice

The Hon'ble Mr. Justice H.K. Rathod, Judge

Whether approved for Reporting?

For Appellants:
MR PV NANAVATY

For Respondents:
MR MEHUL S SHAH
RULE NOT RECD BACK for Respondents-5&6

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PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1 It is proposed to decide this group of four cases (**F.A.No.1672/2005–United India Insurance Co. Ltd. v. Jetiben Bhurabhai Koli Wd/o.Bhurabhai Punja Koli and others; F.A. No. 1 5249/2001–United India Insurance Co. Ltd. v. Gangaben Ramji Koli and**

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Whether Reporters of Local Papers may be allowed to see the Judgment?

others; F.A.No.5250/2001–United India Insurance Co. Ltd. v. Manjibhai Kana Koli and others; F.A. No.5251/2001-United India Insurance Co. Ltd. v. Jesang Kesa Koli and others) by this judgment since they arise out of the same accident, which took place on 05.09.1998 when truck no. GJ-7-X-8634, driven rashly and negligently by its driver, suddenly lost control, went out of way and turned turtle, thereby causing serious injuries resulting in death. Accordingly, claim petitions were preferred by the legal heirs of the deceased claiming compensation for the loss of their bread-earners.

2 Besides, application under Section 166 of the Motor Vehicles Act, 1988 (for short `the Act'), application under Section 163-A was also filed. The Claims Tribunal took up application under Section 163-A for consideration in which written statement of defence was filed by the opponents, taking defences available to them. By the impugned order, claims have been allowed and compensation awarded to respective claimants. These awards are challenged through these Appeals. At the outset, Shri Mehul S. Shah, learned counsel for the claimants submitted that in view of the Apex Court decision in **The Oriental Insurance Co. Ltd., vs Hansrajbhai V. Kodala (AIR 2001 SC 1832)**, claimants can maintain either of the two applications, therefore, he would withdraw the application under Section 166 of the Act.

Thus, Appeals arising out of the awards passed in applications under Section 163-A of the Act are to be considered.

3 Shri Mehul S. Shah submits that these Appeals are not maintainable because the defences of Insurance Company are limited to Section 149(2) of the Act. The Insurance Company cannot raise defences as to negligence and quantum of compensation in absence of permission under Section 170 of the Act. Since permission has not been obtained, appeals deserve to be dismissed on this ground. Reliance is placed on the Apex Court decision in **National Insurance Co. Ltd. v. Nicolletta Rohtagi and others (2002 ACJ 1950)**. This contention has force, therefore accepted.

4 Shri P.V. Nanavaty submits that application under Section 163-A of the Act has been treated substantive application by the Apex Court now, therefore, application under Section 163-A of the Act filed before the decision of the Apex Court deserves full fledged trial, meaning thereby, Court should remand the case to Motor Accident Claims Tribunal for full fledged trial. Further contention is that it is a case of Act-liability, therefore, Insurance Company cannot be held liable for more than what is required by the policy.

5 Giving consideration to the contentions raised, we are of the opinion that the Claims Tribunal has considered the application under Section 163-A of the

Act as per the requirement provided thereunder. Section 163-A does not provide for full fledged trial as contended by the appellant. Under this provision, Motor Accident Claims Tribunal decides compensation on the pleadings and proof advanced therewith by the parities, may be on affidavit. In these cases, claimants have been subjected to cross-examination also. Further, choice is given to the claimant either to approach under Section 166 or Section 163-A, the difference being under Section 163-A the claimant is awarded compensation as per structured formula speedily, while in application under Section 166 he has to go in for full fledged trial of the case and claim more compensation than covered by the structured formula. Plea that liability is limited has not been taken either in the written statement before the Tribunal or in the memo of Appeals, therefore, it is an after thought, as such, it cannot be allowed to be raised.

6 Consequently, we find no merit in these Appeals, the same are dismissed. Amount of compensation, if not deposited, be deposited within a month, thereafter released to the claimants on proper verification.

7 Appellants raised submissions although they were neither in the written statement before the Claims tribunal nor in the memo of Appeals with a view to maintain the appeals, which are not otherwise maintainable, and deprived the claimants from realizing the compensation, therefore, they

shall pay costs of these Appeals, quantified at Rs.2000/- in each Appeal.

(BHAWANI SINGH)
Chief Justice

(H.K. RATHOD)
Judge

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